

Volusia Growth Management Commission

MEETING MINUTES FOR
REGULAR MEETING HELD
Wednesday, March 24, 2010

County Council Chambers
Thomas C. Kelly Administration Center
123 W. Indiana Avenue
DeLand, FL

MEMBERS PRESENT

Gerald Brandon, Chairman
Steve Katz, Vice Chairman
Rachel Sieg, Secretary Excused
Richard Walton
Terry Griffiths
Danny Allen
Sandy Lou Gallagher
Jason Floyd
John Heaphy
Roger Sonnenfeld
Rick Tresher
Robert Storke
Don Romanik
Debbie Connors
Joan Spinney
Sandra Walters
Dwight Lewis
James Wachtel
Kenneth Kuhar

REPRESENTING

Ormond Beach
DeLand
Volusia County
Daytona Beach
Daytona Beach Shores
DeBary
Deltona
Edgewater
Holly Hill
Lake Helen
New Smyrna Beach
Orange City
Ponce Inlet
Port Orange
South Daytona
Volusia County
Volusia County
Volusia County
Volusia County

NON-VOTING MEMBERS

Sara Lee Morrissey
Peter Brown

REPRESENTING

Volusia Co. School Board
SJRWMD

OTHERS PRESENT

Paul Chipok, GrayRobinson, P.A.
Barry Wilcox, MSCW
Merry Chris Smith, VGMC Coordinator

CALL TO ORDER

VGMC Chairman Gerald Brandon called the meeting to order at 7:00 p.m.

ROLL CALL

Roll call was taken and it was determined there was a quorum present.

Chairman Brandon announced two new member appointments: Jason Floyd representing the City of Edgewater, and Don Romanik representing the Town of Ponce Inlet. He also announced the resignation of Sue Elliot who formerly represented the Town of Pierson.

APPROVAL OF MINUTES

Steve Katz made a motion to approve the minutes of the regular meeting held on January 27, 2010 as presented; seconded by Rick Tresher. Motion carried unanimously.

Robert Storke made a motion to approve the minutes of the special meeting held on February 10, 2010 as presented; seconded by Sandy Lou Gallagher. Motion carried unanimously.

Chairman Brandon then announced that he would be moving two items up on the agenda for consideration by the commission at this time.

Item X.1) under New Business – Consideration of Proposed 2010-11 Budget

Chairman Brandon stated that the Budget Committee previously discussed the proposed 2010-11 budget before the full commission and it is now back before the commission in the form of a motion and a second from committee for approval by the commission. There being no discussion, the Chair called the question and the motion carried unanimously.

Item IV.3) under Public Hearings – Consideration of VGMC Resolution #2010-05, modifying VGMC Rules of Procedure relating to reimbursements and billing, annual report requirements, and rules review requirements

Chairman Brandon stated that the POP Committee previously discussed the amendments to the Rules of Procedure with the full commission and it is now back before the commission in the form of a motion and a second from committee for approval by the commission. There being no discussion, the Chair called the question and the motion carried unanimously.

PUBLIC HEARING

Paul Chipok, GrayRobinson, legal counsel to the VGMC addressed the commission. Mr. Chipok read a statement of public hearing procedures into the record and also reviewed the VGMC's scope of authority and consistency criteria. Mr. Chipok then referenced the judge's order in the

Partin v. VGMC case relating to ex parte communications and stated that legal staff recommends that the members not have any ex parte communications as that could be viewed as a violation of due process and potentially void the action by the commission. He stated, however, that if contact is made that is either accidental or incidental, the commission members need to disclose the persons by which the ex parte communication was made and also disclose the details of that communication. Mr. Chipok stated that by doing so, it allows any aggrieved party who was not a participant to that ex parte communication to be made aware of the communication and to be able to give rebuttable testimony for consideration by the commission to ensure due process has occurred.

Mr. Chipok then asked the VGMC Coordinator to enter into the record the additional information the members received from the VGMC office since the staff report was distributed. He added that the communications that are distributed to the members from the coordinator are not considered ex parte communications, but rather additional information provided by the coordinator through the VGMC office.

At this time, the members were asked to disclose any ex parte communications they've had relating to this matter. The commission members responded as follows:

Sandra Walters stated she submitted a written disclosure into the record.

Jason Floyd – none

Robert Storke stated he received emails from Suzanne Steiner and Gordon Williams. He also stated he had a conversation with Jim Kerr, his City's planner, on the comprehensive plan amendment process.

Danny Allen stated he received emails from Ms. Steiner.

Don Romanik – none

Roger Sonnenfeld stated he received emails from Ms. Steiner.

James Wachtel – none

Terry Griffiths stated he received several emails, however, he only read those from the VGMC.

Sandy Lou Gallagher stated she received an email from Suzanne Steiner. She stated she also was in contact with Dave Denny, Chris Bowley and Ron Paradise, all staff members at the City of Deltona. Mr. Chipok stated for the record that Ms. Gallagher is the City of Deltona representative on the VGMC.

Chairman Brandon stated he received emails from the VGMC office, Rita Press, Suzanne Steiner, and Mr. & Mrs. Moen.

Steve Katz stated he received emails from Suzanne Steiner and Ms. Moen, but he stated he did not have the opportunity to read Ms. Moen's.

Rick Tresher stated he received emails from Ms. Steiner and Ms. Moen, and that he also spoke with the planning staff at New Smyrna.

Richard Walton stated he had received a lot of emails, and that this issue has been a matter of discussion among the planning field for some time. He stated he's had discussions with people who have feelings on all sides of the issue, but that his decision will be based on the hearing tonight.

John Heaphy stated he had received a lot of emails, however, he did not open any of them.

Debbie Connors stated she received emails from Ms. Steiner and Ms. Moen, and that she also spoke with the Port Orange Community Development staff.

Dwight Lewis stated he received emails from Ms. Steiner, Ms. Moen and VGMC, however, he had not read many of them.

Ken Kuhar – none

Joan Spinney – none

Commissioner Sonnenfeld asked Mr. Chipok if a member communication with the planning staff of the city they represent would be considered an ex parte communication. Mr. Chipok explained that it would depend on whether the discourse was in the context of a public hearing of the city commission or in a private setting. Mr. Sonnenfeld disclosed that he had communications with the planning staff of the City of Lake Helen relating to this issue.

Mr. Chipok read Commissioner Walters disclosure statement relating to ex parte communications into the record.

Mr. Chipok stated that tonight's hearing is a continuation of the hearing from February 10, 2010 on VGMC Case No. 09-022B and that the hearing was originally requested by the City of Deltona and VGMC staff. The VGMC Coordinator then swore in those individuals who would be giving testimony at the hearing.

1) Consideration of petition for leave to intervene submitted by the Miami Corporation pursuant to Section 90-38, Volusia County Code

Mr. Chipok stated that Miami Corporation is the owner of the property within the Farnton Local Plan amendment. Based on case law, he stated it is his opinion that they have suitable connection to the case and special interest in the property, such that they would be considered a party to the case.

Steve Katz made a motion to approve the petition for leave to intervene submitted by Miami Corporation; seconded by Joan Spinney. Motion carried unanimously.

2) Consideration of VGMC Application 09-022B, County of Volusia Large Scale Amendment Request – Farnton Local Plan – VGMC Resolution #2010-04

Mr. Chipok pointed out that page 5, Section 11 of the draft resolution previously distributed currently goes up to Exhibit #34. He stated an additional Exhibit #35 is being added which is the executed copy of Volusia County Ordinance 2009-34 which includes the revised Farnton Plan. Mr. Chipok stated that Exhibit #30 is a copy of the Farnton Plan, however, that version is prior to modifications made by the County Council in regard to environmental conditions. He stated the Council modifications are reflected in the body of the staff report, however, Exhibit #35 is being added to be sure that the record contains the adopted version of the Farnton Local Plan. Mr. Katz asked if this included the Memorandum of Understanding from the various parties. Mr. Chipok stated that we have an executed copy of the Memorandum of Understanding.

Barry Wilcox, MSCW, Planning Consultant to the VGMC addressed the commission. Mr. Wilcox presented a power point which provided an overview of the amendment application. A copy of the power point presentation is on record at the VGMC office.

Mr. Wilcox stated the amendment consists of both land use and text amendments. He reviewed the current and proposed future land uses, present and proposed entitlements on the property, as well as current and proposed density bonuses relating to specific land uses.

Mr. Wilcox stated that this is a phased development plan, with phase one extending to 2025 which includes 4,692 dwelling units and 820,217 square feet of non-residential development. Phase two, he stated, extends from 2025 to 2060 and allows a maximum of 23,100 dwelling units and 4.7 million square feet of non-residential. Mr. Wilcox stated the net change over the existing entitlements is approximately 18,459 dwelling units and 3.8 million square feet of non-residential.

Mr. Wilcox stated there was an original staff report issued recommending denial and there were many issues in there that the recommendation was based upon. He stated he intends to cover those issues and how they are proposed to be resolved by the County, as well as conditions that would be necessary.

Mr. Wilcox discussed plan horizons of the County and adjacent jurisdictions. He stated the County has proposed the use of a two phase horizon to address any inconsistencies with the plan horizons of adjacent jurisdictions.

Mr. Wilcox then discussed public school concurrency and various policies that are in place in Volusia County for school capacity. He stated that since the original staff report was issued, staff from Volusia County Schools met with County staff and the applicant, and some revisions were made. He pointed out a letter dated February 9, 2010 from the Superintendent of Schools which stated the school district has the ability to provide for 2,287 dwelling units. Mr. Wilcox stated that the Volusia County adoption of the plan on February 18, 2010 indicates that the school district has sufficient capacity to serve 2,287 residential dwelling units within the Farmton Local Plan. Additionally, it states that any change in land use designation, zoning classification or issuance of a development order allowing for increased residential density exceeding the 2,287 units, shall require a finding of school adequacy.

Mr. Wilcox stated the issue of Concurrency Service Area (CSA), commonly referred to as the "no school zone", was also raised. He stated the County has added a policy which states that no finding of school adequacy can be issued until and unless the interlocal agreement is amended to allow school capacity be provided within the Concurrency Service Area. Mr. Wilcox stated they recognize that in order for the project to move beyond the 2,287 dwelling units, they will have to amend the interlocal agreement. He commented that would be no small task as it will require all of the jurisdictions in the County to sign off and then it has to subsequently be reflected in the Public School Facilities Element of the jurisdictions' comp plans.

Mr. Wilcox stated that one of the recommended conditions of approval also addresses the school capacity issue and requires no development beyond the 2,287 residential units shall occur without a finding of adequate school capacity.

Mr. Wilcox reviewed the adjacent future land use map. He also discussed the proposed gateway district and stated that a condition of approval has been agreed upon and recommended which will require that area to be looked at in the future.

Mr. Wilcox then reviewed the individual consistency criteria. With respect to utilities, Mr. Wilcox stated that currently there is no infrastructure or service area. He stated that Farmton has asked to be a public utility provider. Mr. Wilcox also stated a study has been done that indicates there may be as much as 9 million gallons a day of water, but it is not currently permitted. He stated the proposed FLUM designation projects 5.9 million gallons a day of potable water, not including another 5.5 million gallons needed for irrigation. He added that the plan does propose to use sources other than potable water for irrigation purposes, such as reuse water, gray water, etc. Mr. Wilcox stated that adequate permitting capacity does not currently exist so they will be required to go through that process.

In response to questions raised by several commissioners, Mr. Wilcox clarified that the numbers referenced in the staff report relate to the demand for water under the current and proposed land uses, and not the supply. He also stated that new data relating to water was provided by the County which resulted in the change in numbers from the original staff report.

Mr. Wilcox then discussed the City of Edgewater public water supply area as it relates to the Farmton property. He also stated that he does not believe that capacity currently exists to serve the Farmton property, however, policies have been written into the plan to cover that. Mr. Wilcox referenced the specific policy proposed by the County to address deficiencies in both potable and waste water. He stated the policy basically states that nothing can occur until the water is there.

Mr. Wilcox stated that a recommended condition of approval would require that no development occur on the property until a Master Development of Regional Impact (DRI) or Application for Master Development Approval (AMDA) is done and submitted to VGMC for certification. He compared this requirement as being similar to the conditions of approval the VGMC has imposed in several jurisdictions where they are required to submit PUD's to the VGMC in areas that are designated as mixed use, but on a much larger scale. Mr. Wilcox stated under the proposed condition, we are deferring much of the data and analysis to the DRI process. He added that the DRI process is a much more thorough process and provides assurance that we will get the level of detail needed to determine whether adverse impacts exist. Mr. Wilcox referenced the specific policies in the proposed plan which address the DRI review requirement. Additionally, he commented that the VGMC should not only be looking at the AMDA, but also incremental additions to the DRI, and he wants to be sure that is covered in the proposed conditions of approval.

With respect to transportation, Mr. Wilcox stated these issues can better be addressed during the DRI process, which again would be reviewed by VGMC as a condition of approval. He also discussed the proposed roads and stated the County has asked the developer to pay for the spine network. Mr. Wilcox discussed natural resources and reviewed several maps including: flood, soils and wetlands. He also stated that a lot of that area is going to be placed under conservation and that natural resource impacts are studied in great detail in the DRI process. Mr. Wilcox also discussed mitigation banks and capital improvements.

Mr. Wilcox stated that a Memorandum of Understanding (MOU) has been entered into by the County, the City of Deltona and the Miami Corporation relating to the City of Deltona's original objections. He stated that per the MOU, an interlocal agreement is to be executed on or before the end of April.

Mr. Wilcox then reviewed the findings and recommendations. He stated that to address the lack of data and analysis at this time, it is recommended that all development within the Farmton Local Plan shall occur as part of a Master DRI. He added that this is a reiteration of Policies 8.1 & 8.2 in the County's amended plan for Farmton. Mr. Wilcox also reviewed the recommended condition relating to school impacts, and further discussed the requirement relating to review of the AMDA and that the application shall be filed within 60 months. In conclusion, Mr. Wilcox stated that no development will occur on the property until an AMDA is submitted to VGMC for review and certification.

Commissioner Katz asked if Volusia County was in agreement with the proposed conditions of approval. Jamie Seaman, Deputy County Attorney for Volusia County, stated that they understand and accept the proposed conditions of approval and will be taking those back to the County Council so they fully understand them as well. Mr. Chipok added that he, Mr. Wilcox, Tom Cloud and Jim Sellen, as VGMC's legal and planning staffs, had numerous meetings with Volusia County staff and Miami Corporation to address our concerns and come to terms with the conditions.

Commissioner Walters commented on findings made in the original VGMC staff report. Mr. Wilcox stated that the original application submitted made no mention of the DRI being reviewed by the VGMC. He stated the DRI process will address the data and analysis which was lacking in the original application. Mr. Wilcox also stated that on a smaller scale, the VGMC has reviewed other cases in the past where the data and analysis was not available at the time of application, but a determination would be made at a later date in the process when the information was available.

Ms. Walters continued to quote the findings from the original VGMC staff report which was prepared for the February 10, 2010 hearing. Mr. Chipok clarified that the original hearing was scheduled for February 10, 2010 at which time Volusia County requested a continuance in order to provide additional information. He stated since the February 10th meeting, the County submitted a large amount of materials, including additional conditions the County has added as

policies to the proposed amendment, which has addressed the majority of issues raised in the original staff report. Mr. Chipok stated the supplemental staff report points out how the County has reacted to the questions originally posed. As a result of the additional information and policies added by the County, he stated six conditions of approval are being recommended in order to cover any gaps in the present information and so the VGMC will be able to review additional impacts when the information is available.

Commissioner Walters asked Peter Brown if the water study which indicated there may be water was done by the St. Johns River Water Management District (SJRWMD). Peter Brown, Policy Analyst with the SJRWMD and ex-officio member of the VGMC, stated that the study was not completed by the SJRWMD.

Commissioner Gallagher commented that all of the additional information submitted by the County still lacks the data and analysis which would address the six consistency criteria. Mr. Wilcox stated there was some additional data and analysis provided, but primarily what was received were significant revisions to the text policies to assure that the VGMC would be able to review and address that at a future point in the process.

Commissioner Walton stated that the recommendations rely heavily on the DRI process and asked what would occur if the DRI process goes away at some point in the future. Mr. Chipok responded that our conditions state that the County will follow the DRI process as it exists today. Therefore, the County will still be required to follow the DRI process as it exists today, even if it is not a requirement of the State.

Jamie Seaman, Deputy County Attorney for Volusia County, addressed the commission. Ms. Seaman presented a power point which provided an overview of the amendment application. A copy of the power point presentation is on record at the VGMC office.

Ms. Seaman discussed the responsibilities of various agencies that review comprehensive plan amendments. She also discussed planning horizons, the proposed land uses, and the various policies and objectives of the proposed amendment. Ms. Seaman stated that the only adjacent jurisdiction to the subject property is the City of Edgewater. Quoting Section 90-35(e)(4) of the VGMC consistency certification rules, Ms. Seaman stated that the City of Edgewater did not object to the amendment and therefore, there is a presumption that Edgewater approves the proposed amendment.

Ms. Seaman stated that the City of Deltona originally raised some issues, however, after meeting with them, the issues have been resolved. Exhibit 33 of the supplemental staff report is correspondence from the City which states the City's issues have been satisfied if the terms of the Memorandum of Understanding (MOU) are included in the VGMC Resolution, which she stated they have. Ms. Seaman stated the executed version of the MOU is at Exhibit 34.

Referring to Exhibit 32, Ms. Seaman quoted a letter from the Superintendent of Schools dated February 9, 2010 that states the Farnton Local Plan as proposed addresses and protects the

School District's interests. She further quoted a March 5, 2010 letter from Saralee Morrissey confirming that the February 9, 2010 letter is the District's current position, and that they have adequate school capacity for 2,287 units. Ms. Seaman stated that the proposed amendment has numerous policies that caps development at 2,287 units until such time as the School District makes a finding of adequate school capacity above that amount.

Ms. Seaman then reviewed the individual consistency criteria.

With respect to central utilities, Ms. Seaman stated that the question of whether or not there is sufficient water is a question for the SJRWMD. She stated that the City of Edgewater and Farmton LLC are the sole utility providers in this area. Ms. Seaman then discussed various plan policies that require Farmton Waters Resources LLC be solely responsible for the infrastructure improvements, and that no development shall be approved until adequate water is available.

Ms. Seaman then discussed transportation. She stated there is a letter from FDOT dated March 18, 2010 which indicates they no longer have issue with the methodology. Additionally, she stated that the spine network will be solely funded and constructed by the owner/developer, which she stated is Farmton Goal 5.7. Ms. Seaman stated there are no extra-jurisdictional impacts. The City of Deltona had expressed concerns and the County entered into the MOU that the City of Deltona will not be financially responsible for any impacts that occur within the roadways.

Ms. Seaman discussed additional policies and goals in the proposed plan which address transportation, infrastructure, schools, and a master stormwater plan.

Ms. Seaman discussed requirements the County has imposed relating to certain areas of the property going into conservation covenants and easements. She also discussed the NRMA overlay, as well as various policies associated with conservation requirements, wetland buffers, wildlife protection, capital improvements, and the assurance that the developer is solely responsible for the majority of the developed property. Ms. Seaman stated Farmton Goal 7.1 requires that development shall meet or improve the level of service, and that additional school district and local government services and infrastructure shall be funded by the properties within the SDA districts. She stated this is part of fiscal neutrality and a very important part of the plan in that the developer must do an analysis to determine that the services and capital infrastructure can be supported only by the land within the development, meaning that the land must be self-sustaining.

In closing, Ms. Seaman stated they believe that they have established through substantial competent evidence, through sworn expert witness testimony submitted with their package, with the record as a whole, with all of the reports and documentation, that the County has provided reasonable assurance the amendment is consistent with the municipalities' comprehensive plans and that the provision of public services and improvements have been adequately coordinated. She urged the Commission to approve the resolution as drafted by staff, and she stated the County accepts all conditions in Section 2 of the resolution.

Commissioner Gallagher asked if there was any verifiable data relating to the availability of water on the Farmton property. Ms. Seaman responded that the SJRWMD has sole responsibility in making that determination and that reports prepared by Dr. Devo Seereeram have been filed with the SJRWMD. Additionally, Ms. Seaman stated that the Farmton goals specifically provide that if they cannot receive consumptive use permits for groundwater withdrawal, they must provide all water to the development from an alternative water supply.

Commissioner Gallagher commented on traffic impacts to the City of Deltona. Ms. Seaman responded that the MOU was entered into with the City of Deltona to verify that they will not be financially responsible for any impacts to maintain the level of service on Deltona roads. She added that this language is included in the VGMC resolution.

Commissioner Romanik raised several questions relating to water. Ms. Seaman stated that the SJRWMD was provided with Dr. Seereeram's report which included an aquifer analysis. She generally discussed the findings in Dr. Seereeram's report and stated it is the exclusive authority of the SJRWMD to review that and determine consumptive use. Ms. Seaman reiterated that if the SJRWMD finds they will not issue a withdrawal from the aquifer, the Farmton Local Plan provides language that they must rely on alternative water supply. In response to a question raised by Commissioner Tresher, Ms. Seaman stated that Dr. Seereeram's report has not yet been accepted by the SJRWMD.

Commissioner Katz raised a question relating to present school capacity of 2,287 and how it would be addressed if the same capacity does not exist in the future due to other potential developments. Ms. Seaman responded there is a provision that when it comes to rezoning, the school district will make another determination of school capacity. She also stated that any development above the 2,287 would require amendments to the maps and the public school interlocal agreement.

Commissioner Walton asked if the developer had contributed anything at this point to get the present school capacity of 2,287 units. Ms. Seaman stated that the capacity for 2,287 residential units presently exists, and the developer would be responsible for funding anything above that.

Commissioner Wachtel asked Ms. Seaman for confirmation that on February 18, 2010 the County Council approved the Farmton Local Plan with conditions. Ms. Seaman confirmed, but also added that the Council had not seen any conditions which may be imposed by the VGMC and that County staff would take that back to the County Council.

Commissioner Allen commented that the amendments require the master DRI, as well as any incremental DRI's, to come back before the VGMC. Ms. Seaman confirmed.

Commission Katz asked if the intent was also to bring back to the VGMC any deviations to the DRI(s). Joel Ivey, Ivey Planning Group, 1349 S. International Drive, Lake Mary, responded to Mr. Katz. Mr. Ivey stated that if an NOCP is done to change the DRI it is considered a minor

change, or if there is a major change it is considered a substantial deviation. In either case, Mr. Ivey stated you have to amend the development order, which requires a hearing. He stated that his understanding would be that if a hearing is required to change the DRI development order, it would have to come back to everyone who reviewed it originally, including the VGMC.

Commissioner Walton stated the DRI process is very thorough, however, he stated that the VGMC does not have rules or procedures relating to review of DRI's and he asked how the commission would be involved in the DRI review. Mr. Wilcox responded that he would see the VGMC review it under their scope of authority in terms of the data and analysis and how it meets the consistency review criteria. In terms of the standards the VGMC would use, Mr. Chipok read from condition 1 on page 33 of the resolution. He stated similar to VGMC's review of PD's in several jurisdictions, when the data and analysis is not available at the time a land use change is approved, we require the jurisdictions to submit the data and analysis when it is available at a future date at which time it is reviewed for consistency.

Commissioner Spinney asked for clarification on what would prevent the landowner from selling the environmental land and ranchettes being developed. Ms. Seaman responded that within 60 days of the effective date of the Farmton Local Plan, the property owner is required to put the first conservation covenant in place. Within one year, she stated the remainder conservation covenants have to be placed over the entire Greenkey land use. Ms. Seaman added that the Greenkey land use designation removes all development rights. Commissioner Tresher stated that there will be some ancillary development in the Greenkey area. Ms. Seaman responded that the Greenkey land use designation allows for such things as road crossings, rail to trail crossings, elevated boardwalks, environmental learning centers, and solar power fields.

General discussion ensued relating to conservation covenants, and development allowed under the present and proposed land use designations.

In response to an earlier question, Mr. Chipok clarified that one of the conditions of applying for a DRI is that it requires 100% of the landowners agreeing to the application for the DRI. He stated the way our conditions read, the entire property is subject to moving forward under a DRI. Therefore, Mr. Chipok stated if the current property owner sells off any of the property, the persons they sell the property to must join in on any comprehensive plan applications.

Glenn Storch, law office of Storch, Morris & Harris, representing the Miami Corporation, briefly addressed the commission. Mr. Storch stated he has informed his client, Miami Corporation, that if the plan is adopted, the subdivision currently on the property will be terminated, the effect of this plan will be a building moratorium on the property at least until 2025, and that a master DRI will be required. Additionally, Mr. Storch stated they support the recommendation of approval with the conditions proposed by staff.

Chairman Brandon called for short break at 9:34 p.m. and the meeting reconvened at 9:49 p.m.

Ms. Seaman clarified for the record that the conservation covenants roll perpetually every ten years until one of two things happen: 1) They become permanent conservation easements; or 2) The County amends the comprehensive plan, which she stated the VGMC would see.

With respect to the condition requiring VGMC review of the DRI, Mr. Chipok stated that this is not unprecedented. Mr. Chipok stated his partner, Tom Cloud, has pointed out there have been two instances of DRI review by the VGMC in the past, specifically the 472 Master DRI and Victoria Park. After comprehensive plan approval, these had to come back at the DRI stage for specific VGMC approval.

Chairman Brandon then opened the floor for public comment, beginning with those individuals wishing to speak in favor of the amendment. He also stated there were upward of 50 speaker requests and that comments would be limited to three minutes.

Jason Steele, former state representative and citizen from Brevard County, spoke in favor of the proposed amendment. He stated that Brevard County approved the plan and that the individuals involved with the proposed amendment are a perfect team of professionals. Mr. Steele stated that those in Brevard County feel this project will make a tremendous amount of difference to the state, economic development, and to the communities.

Bill Gogel, 2609 Spruce Creek Blvd, Port Orange, owner of K & B Landscape Supply, spoke in favor of the proposed amendment. Mr. Gogel discussed his relationship with Miami Corporation and the positive impacts the proposed amendment will have on his business and Volusia County.

Bruce Grundish, New Smyrna Beach, spoke in favor of the proposed amendment and discussed how he and his family have enjoyed using the Farnton property over the past 40 years.

Colleen Castille with Go Green Strategies, 200 West College Avenue, Tallahassee, addressed the commission in favor of the amendment. Ms. Castille stated she is the former Secretary of DCA and DEP under Governor Bush. She discussed other similar developments in Florida that came through both DCA and DEP in the past, and also commented on the protection of 40,000 acres of land as proposed.

Susan McCaskill addressed the commission in favor of the proposed amendment. She stated that her family has owned 240 acres of property located just east of SR 415, and north of Osteen-Maytown Road for over 50 years and she feels the proposed amendment will enhance the entire area.

Bill Kirchoff, Sanford, stated he owns property adjacent to the McCaskill property. Mr. Kirchoff spoke in favor of the proposed amendment and stated it is better to have a development that is controlled as opposed to smaller developments one after another. He also discussed traffic patterns and the potential rerouting of Osteen-Maytown to a northerly direction.

Willard Campbell, a resident of Volusia County, spoke in favor of the development.

Charlie Faulkner, 139 Palmetto Avenue, spoke in favor of the amendment. Mr. Faulkner discussed his experience working on environmental impact studies and also managing large developments.

Sid Hawkins, a resident of Seminole County, spoke in opposition of the proposed amendment. Mr. Hawkins stated that the County has enough development now with houses, apartments and condos sitting empty. He also expressed concern over wildlife.

Michelle Hooker, 3051 S. Atlantic Avenue, Daytona Beach Shores, addressed the commission in favor of the plan. Ms. Hooker stated this is a great opportunity for Volusia County and the local communities.

Fred Keiser, 1590 S. Woodland Boulevard, DeLand, spoke in favor of the proposed amendment. Mr. Keiser spoke of the various activities he's enjoyed on the Farmton property over the years and also commented on the amount of the property being delegated as natural resources or wilderness.

Dan Huchs, 4920 SR 11, Deleon Springs, addressed the commission in favor of the plan. Mr. Huchs commented that this property will remain on the tax rolls in Volusia County and Farmton will be required to maintain the property.

Paul MacKay, 1770 Maytown Road, commented in favor of the Farmton plan.

John McCue, 426 West Holly Drive, Orange City, spoke in favor of the proposed amendment. Mr. McCue stated he concurred with all of the positive remarks previously made. He also stated that the thorough review of the plan by the various governmental agencies and the resulting recommended conditions for granting approval will ensure that any future impacts on the property will enhance the long term vision for southern Volusia County.

Jim Russell, 880 Flounder Avenue, New Smyrna Beach, addressed the commission in favor of the Farmton Plan. Mr. Russell stated over the past seven years he has worked closely with many individuals as part of the County's smart growth initiative. He stated the Farmton Plan is the epitome of smart growth for Volusia County and that it represents all of the principles they have been working for. Mr. Russell also stated he serves on the County's Planning and Land Development Regulation Commission and that after considerable study, that commission unanimously approved forwarding this proposal to the County Council with their approval.

James Dean, 546 Maytown Road, Oak Hill, stated he and his family own property adjacent to the Farmton property and he spoke in favor of the proposed amendment.

William Schimansky, 2481 Gopher Hill Trail, stated he owns property near the Farmton property and spoke in favor of the proposed amendment.

Diane Singh, 582 N. Firwood Drive, Deltona, addressed the commission in support of the plan. Ms. Singh discussed the proposal being a walkable, multi-modal community and the benefits of such. She also spoke favorably of the proposal bringing new jobs.

Earl Underhill, 1860 Odham Drive, Deltona, spoke in favor of the plan. Mr. Underhill spoke of his experience as forester and manager at Farmton, and his ability to both protect and use the resources on the property. He also spoke of Miami Corporation as a responsible landowner.

Lisa Ford-Williams, 509 W. New York Avenue, DeLand, stated she owns property adjacent to the Farmton property and spoke in support of the plan. Ms. Williams discussed the amount of land preserved under the proposal, the job to housing ratio, the DRI requirement, and other aspects of the plan.

Charles Williams, 366 Williams Avenue, Daytona Beach, commented in favor of the proposed plan.

John Sadler, 5776 White Acres Lane, Port Orange, spoke in support of the Farmton Plan. Mr. Sadler stated this is a plan for the future, and that as a younger resident, he has a vested interest in future plans of the County.

Allen Watts, 351 E. New York Avenue, DeLand, spoke in favor of the proposed amendment. Mr. Watts discussed the role of the VGMC along with the criteria and conditions the members should be considering in their decision. Commissioner Walters asked Mr. Watts who his client was at tonight's hearing. Mr. Watts responded that he was asked by Farmton to appear as an expert in local government law and structure..

Charles Lee, Director of Advocacy Audubon of Florida, 1101 Audubon Way, Maitland, addressed the commission in support of the plan. Mr. Lee discussed the present entitlements on the property that will no longer exist with approval of the plan. He also discussed the conservation covenants that would result. Mr. Lee stated that questions relating to water adequacy, school capacity, etc. are reserved for the DRI process when the data and analysis is completed. He further stated that nothing is guaranteed in terms of development, however, the preservation of land is.

Jim Morris, 420 S. Nova Road, addressed the commission in support of the proposed amendment. Mr. Morris discussed standards the commission should be considering as they make a decision on the plan. He also discussed various aspects of the plan relating to water and traffic.

That concluded those individuals speaking in favor of the amendment, and Chairman Brandon called those who were present to speak in opposition.

Susan Young, 2014 Laredo Drive, Deltona, spoke in opposition of the proposed amendment. Ms. Young stated the plan is not consistent and does not work with the City of Deltona, Osteen, the swamps or the planned water usage.

Betty O'Laughlin, 715 McKenzie Road, Lake Helen, stated she is President of the Environmental Council and addressed the commission in opposition of the proposed plan. Ms. O'Laughlin commented on the amount of staff time and tax dollars that have been put into this project.

Ferd Reinlieb, 1440 Arrowhead Trail, Enterprise, spoke in opposition of the proposed plan. Mr. Reinlieb stated that if the commission is considering approving the plan, he suggested an additional condition be imposed where the landowner guarantees to complete all of the promised extensions, to make it revenue neutral to the citizens of Volusia County and adjoining communities.

Hank Wenz, 658 Whitmarsh Avenue, Deltona, addressed the commission in opposition of the plan. Mr. Wenz stated that the location of the proposed plan is poor. He also displayed a cartoon on the overhead and discussed level of service road standards and stormwater runoff.

Henry Morgenstern, an attorney representing Barbara Herrin and Edgewater Citizens Alliance for Responsible Development, 704 W. Park Avenue, Edgewater, addressed the commission in opposition of the proposed amendment. Mr. Morgenstern discussed the charter language relating to a finding of consistency and he also stated the VGMC does not have the authority to review DRI's.

John Baker, 9 Cunningham Lane, DeBary, spoke in opposition of the proposed amendment. Mr. Baker discussed various state statutes and the need to have the data and analysis. He also discussed DCA's findings and commented that the new plan does not address DCA's objections. Mr. Baker also raised concerns over costs associated with maintaining roads and infrastructure in the future.

Alice Jaeger, 34 Sandra Drive, Ormond Beach, addressed the commission in opposition of the plan. Ms. Jaeger discussed environmental concerns and spoke of costs to the taxpayers for the benefit of developers. She also stated that impacts from this project will lower the quality of life for residents in established communities.

Suzanne Steiner, 5905 Luke Lane, Volusia County, spoke in opposition of the Farmton Plan. Ms. Steiner stated that there is no plan, but rather conditions predicated on future DRI's. She also raised concerns relating to taxpayer costs and the intense follow up that would be required if the plan is approved.

Norman Lane, 1314 Northside Drive, Ormond Beach, addressed the commission opposed to the plan. Mr. Lane commented that there has been no competent, substantial evidence presented at the hearing to show that the plan is consistent with neighboring jurisdictions.

Donald Kanfer, 860 Orange Camp Road, DeLand, stated he represents the Volusia Flagler Sierra Club and the Volusia Soil & Water Conservation District. Mr. Kanfer spoke in opposition of the proposed amendment, stating that the project is inappropriate for reasons such as the scope, size and location. He also raised concerns on impacts to adjoining jurisdictions relating to flooding, traffic and wildlife.

Pat Drago, 325 Pelican Avenue, Daytona Beach, addressed the commission opposed to the plan. Ms. Drago stated if the amendment is approved, the entitlement will be granted for 23,000 dwelling units and 4 million square feet of non-residential space. She also discussed the drop in population in the County over the past two years and stated that there are currently over 60,000 dwelling units already permitted within the County.

Keith Schue, 30641 Edgewood Street, Sorrento, spoke in opposition of the plan. Mr. Schue stated the Farnton project could have a profound impact on ecosystem connectivity extending beyond Volusia County, and he commented on DCA's findings as well as others who have weighed in on the proposal.

Chairman Brandon stated there were several individuals who did not indicate whether they were in favor of or opposed to the plan and would call them at this time.

Tanner Andrews, stated he would not be speaking for or against, but stated that the MOU signed by Deltona and Volusia County is being challenged in court and he submitted a copy of the law suit for the record.

Eric West, 1401 S. Palmetto Avenue, Daytona Beach, spoke in opposition of the proposal. Mr. West stated that the amendment is inconsistent and he raised concerns with the security of the proposed conditions of approval.

David Hartgrove, 113 Centennial Lane, Daytona Beach, stated he is the President and Conservation Chair for the Halifax River Audubon. Mr. Hartgrove spoke in opposition of the plan, stating that this development represents sprawl.

Carolyn West, 119 Pine Tree Drive, Ormond Beach, read into the record a statement written by Rita Press, who was unable to attend the meeting, expressing opposition to the plan.

Public comment was concluded.

Jamie Seaman discussed the role of the VGMC, stating that it is the commission's responsibility to determine whether the amendment adversely affects intergovernmental coordination and cooperation, and not whether they like or dislike the plan. Ms. Seaman stated that there is no jurisdiction before the commission tonight expressing opposition to the plan. She requested the VGMC accept the staff recommendation and approve the application with the proposed conditions.

Glenn Storch addressed the commission relating to the efforts that went into the process over the past four years, including intergovernmental cooperation, coordination and consensus building. He also discussed the smart growth committee recommendation relating to rural land stewardship, and stated this is what the Farmton Plan is doing in preserving huge areas of land in return for density, but not for payment.

Commissioner Katz asked Mr. Storch to discuss school capacity as well as the no school zone. Mr. Storch stated the school board found that they have capacity for 2,287 dwelling units and that is what the plan is limited to at this time. He also stated that it was not intended to be a no school zone, but rather a central concurrency area to separate east from west, and to ensure that schools were available.

With respect incremental DRI's, Commissioner Katz suggested that language be added to the resolution which makes it clear that incremental DRI's must also come back to the VGMC. Mr. Chipok and Ms. Seaman discussed the recommendation and suggested that language be added to include "any substantial deviations" of the DRI would come back to the VGMC for review.

In response to the earlier comment that the MOU is being challenged, Commissioner Katz stated his understanding is that no one can override an interlocal agreement if the three parties are agreeing. Mr. Chipok concurred and also pointed out that the conditions of the MOU are included verbatim in condition #5 of the proposed resolution.

Commissioner Gallagher commented that the MOU only addresses water and transportation and the City of Deltona did not received anything from the County addressing their objections. She also stated Deltona's main purpose for the MOU was to make sure they would be involved with the County and Farmton on transportation and water issues, and without the agreement, the City would be left out. Mr. Chipok stated that's not necessarily the case since the property still has to go through the DRI process, which is a regional review, and even without the MOU they would be part of the public process through the DRI. He further stated that the MOU is a step above the normal DRI process. Ms. Gallagher stated the MOU only address two of the six VGMC criteria. Mr. Chipok responded that the MOU was not mandated by the VGMC, that it came to us with the endorsement of the City of Deltona. He also stated that we have a letter in the record from the City Attorney stating that the MOU addresses all of the concerns the City of Deltona had.

Commissioner Romanik asked Mr. Chipok for legal clarification on an earlier citizen comment that the VGMC's approval of the proposed amendment entitles Miami Corp to certain obligations in further permitting. Mr. Chipok responded that the amendment sets the ceiling for the maximum amount of development that may occur on the property. He added, however, that in order to reach the maximum amount, there are numerous other processes they will have to go through in order to prove up that there are adequate facilities, etc. Commissioner Romanik also asked if there would be any impacts on this application if Amendment 4 passes in November. Mr. Chipok stated his understanding is that any existing comprehensive plan amendments would not be subject to Amendment 4.

Commissioner Allen commented that the adjacent jurisdictions do not have a problem with the plan and that he does not see how it could be handled any better in terms of requiring them to come back to ensure there is consistency down the road.

In response to a question from Commissioner Katz, Mr. Chipok stated that the County has included a fiscal neutrality policy in several places within the Farmton Local Plan which requires the developer to be responsible for the roads and infrastructure.

Commissioner Katz asked who the DRI's would be reviewed by if the VGMC is no longer in existence at some point in the future. Ms. Seaman stated that during the last charter review process, it was agreed that any VGMC resolutions would still be binding even in the commission no longer existed. She also stated that the language in the resolution is also included in the plan, and any developer would still be required to follow the DRI process which allows all of the jurisdictions to weigh in.

Commissioner Sonnenfeld commented on the increase in development over the current entitlements and asked how the conservation requirements would be impacted if the property is not developed to the maximum as established by the plan. Mr. Chipok responded that there is language in the policy that they would still be obligated to maintain the conservation easements and covenants. He added that the only way there could be a release of conservation covenants would be if there was an imposed reduction in densities at the comprehensive planning stage level by the County. Mr. Chipok stated the way the policies read, any voluntary reduction in densities would still require they have the same amount of conservation area that they have in the present plan.

Chairman Brandon closed the public hearing portion of this item.

Steve Katz made a motion to approve Resolution #2010-04; seconded by Joan Spinney.

Chairman Brandon opened up the floor for commission discussion.

Commissioner Gallagher spoke in opposition of the amendment, stating the data and analysis needed does not exist. She also commented on the lack of need for the development, the current number of homes in foreclosure, concerns with water availability, the location of the property in the 100-year plain, the inability to build on the wetlands and soils on the property. Ms. Gallagher stated the commission cannot determine consistency with the six criteria due to the lack of data and analysis. She also stated there are issues of incompatibility relating to the planning horizon, and other items including schools and utilities. Ms. Gallagher commented that the SJRWMD had not yet issued consumptive use permits and asked Mr. Brown to confirm that.

Commissioner Spinney stated Commissioner Gallagher's comments were not discussion, but rather that Ms. Gallagher was giving testimony which is against the VGMC rules. Mr. Chipok

added that the public hearing portion of the meeting was closed and the commissioner's should not be asking questions of the audience at this point in time. Chairman Brandon asked Commissioner Gallagher not to give testimony but rather stick with points of discussion. Ms. Gallagher stated per point is that due to the lack of information, the commission does not have definitive answers on any of the six consistency criteria. Commissioner Spinney stated that one of the responsibilities of the VGMC is to ensure policies are in place to gather the information to fill any gaps that are identified. As an example, Ms. Spinney stated that we don't have to know whether the water is out there, the developer has to find it before they can get the permit to build. Chairman Brandon concurred, stating that would go beyond the purview of the VGMC. Commissioner Romanik commented on the record that he disagreed with Commissioner Spinney, stating that without the information, the commission has no justification or basis for determining consistency.

Mr. Chipok stated that according to the charter, the commission's role is to determine consistency of the comprehensive plan amendment with the other affected jurisdictions' comprehensive plans. He stated the VGMC has the ability to find it consistent, not consistent, or consistent with conditions. Mr. Chipok stated the commission's decision should be based on evidence presented at the hearing and not based on outside discussions as that leads to a due process problem and a possible challenge and overturning of the decision. He stated the commission's charge is to look at intergovernmental coordination and consistency.

Commissioner Lewis commended the VGMC staff and the staff of Volusia County for their review of the application to ensure both consistency and intergovernmental coordination was achieved. Mr. Lewis stated he supports the amendment with the proposed conditions.

Commissioner Tresher complimented Mr. Wilcox on the job he did in reviewing the application. Mr. Tresher stated that looking at the analysis based on the VGMC consistency criteria, he finds that the amendment fails on every one of the criteria. He stated the commission has the option to reject the amendment, or approve it with a list of conditions. Commissioner Tresher stated he could not in good conscious approve something that has such a dramatic impact on southeast Volusia County with so little data and so many unanswered questions.

Commissioner Romanik commented on the role of staff and role of the VGMC members. He commented that he felt the plan was a good idea, however, he felt it was immature and incomplete with too many unanswered questions.

Commissioner Wachtel commented that this is a plan of where the County wants to go, and that the facts will be studied ad infinitum over the next five years by all of the various professional agencies. He stated he believes the plan is consistent with the other municipalities' comprehensive plans and he encouraged the members to support amendment.

Commissioner Walters commented on terms used by staff when describing the proposal. She also quoted from a News Journal article, the MOU, as well as other documents and comments from prior meetings. She stated that if the amendment was consistent, there would be no need

for an MOU. Ms. Walters also discussed the role of the VGMC in determining consistency and commented that she did not see any competent and substantial evidence presented.

Commissioner Walton commended the work done by the various members of staff. He also discussed the additional processes the plan needs to go through, including negotiations with DCA and the DRI process, in order for it to move forward.

There were no further comments by members of the commission.

Mr. Chipok stated that Commissioner Katz had previously recommended adding a “substantial deviation” provision added into the conditions. Mr. Chipok suggested the commission address this prior to the vote. If the commission wished to add the provision, he suggested modifying the second sentence of the first condition to read: “Specifically, the Application for Master Development Approval (AMDA), all subsequent Applications for Incremental Development Approval (AIDAs) and any Substantial Deviation amendment to the DRIs shall be submitted to VGMC and must receive a certification of consistency before any development may proceed.”

Commissioner Katz made a motion to amend his original motion to incorporate the suggested modification to the resolution into the original motion; seconded by Commissioner Spinney. The motion to amend the original motion carried by a 13-5 vote.

A roll call vote was taken on the motion and second to approve VGMC Resolution 2010-04 as amended. The motion carried with a 13-5 vote representing 67.45% of the weighted vote. A copy of the roll call vote sheet is attached as Exhibit A.

REMARKS OF INTERESTED CITIZENS

None

REPORTS OF OFFICERS

None

REPORTS FROM CONSULTANTS

Mr. Chipok reported receiving today a copy of a lawsuit filed against VGMC relating to the City of Edgewater Restoration amendment. He stated it is a request for declaratory judgment which proposes that a VGMC public hearing should've been held on the Restoration remedial amendments. Mr. Chipok stated the Edgewater Restoration amendment was letter certified by VGMC, the amendment was challenged by DCA, and remedial amendments were proposed. He stated that the remedial amendments were submitted to the VGMC prior to the City of Edgewater adoption and that they were reviewed and found to be consistent with the prior VGMC certification as there were no additional impacts. Additionally, he stated the remedial

amendments were actually a scaling back of the original project. Mr. Chipok stated the VGMC Chair issued another letter which indicated that under 90-37(i), we've reviewed the additional information and found it to be consistent with the prior approval. He stated that we haven't yet been served and have only been made aware of the challenge, but it is our position the plaintiff is in error and we followed the correct procedure.

REPORTS OF COMMITTEES

POP Committee:

Commissioner Katz reported that POP had concluded the preparation of the RSQ for contract legal services and it would go out the second week of April. He stated at this point we are soliciting proposals and that the RSQ process will go on throughout the next several months.

UNFINISHED BUSINESS

None

NEW BUSINESS

None

REPORTS AND REQUESTS OF COMMISSION MEMBERS

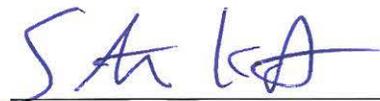
None

REPORTS AND REQUEST OF COMMISSION CHAIR

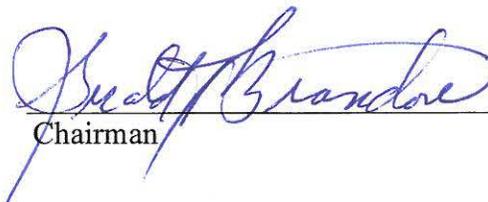
Chairman Brandon reported that the April 28, 2010 VGMC meeting will likely be held in Daytona Beach. Commissioner Katz asked staff if there were any items to be scheduled for public hearing in April. Mr. Wilcox responded that he is not aware of any items that will be scheduled for an April hearing at this time.

ADJOURNMENT

The meeting was adjourned at 12:35 a.m.



Attest:


Chairman

VGMC ROLL CALL VOTE

Date: 3/24/10

MOTION: Commissioner Steve Katz made a motion to approve VGMC Resolution #2010-04 as amended; seconded by Commissioner Joan Spinney.

	Member	City Population	Percentage	Vote	
				Yes	No
DAYTONA BEACH	Richard Walton	65,208	12.86%	Y	
DAYTONA BEACH SHORES	Terry Griffiths	5,475	1.08%	Y	
DeBARY	Danny Allen	18,741	3.69%	Y	
DeLAND	Steve Katz	27,123	5.35%	Y	
DELTONA	Sandy Lou Gallagher	84,264	16.61%		N
EDGEWATER	Jason Floyd	21,394	4.22%	Y	
HOLLY HILL	John Heaphy	12,851	2.53%	Y	
LAKE HELEN	Roger Sonnenfeld	2,878	0.57%		N
NEW SMYRNA BEACH	Rick Tresher	23,449	4.62%		N
OAK HILL	Vacant	1,984	0.39%	--	
ORANGE CITY	Robert Storke	10,203	2.01%	Y	
ORMOND BEACH	Gerald Brandon	40,832	8.05%	Y	
PIERSON	Vacant	2,651	0.52%	--	
PONCE INLET	Don Romanik	3,266	0.64%		N
PORT ORANGE	Debbie Connors	56,732	11.19%	Y	
SOUTH DAYTONA	Joan Spinney	13,530	2.67%	Y	
UNINCORPORATED AREA*		116,524	23.00%*		
	Dwight Lewis		4.60%	Y	
	James Wachtel		4.60%	Y	
	Rachel Sieg		4.60%		not present
	Kenneth Kuhar		4.60%	Y	
	Sandra Walters		4.60%		N
	TOTAL:	507,105	100.0%	13	5

Affirmative votes required: 10
 Total weighted vote required: 47.25%

RESULT: Motion carried 13-5 with 67.45% of the weighted vote